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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 87

BOB WHITE,

Petitioner.

THE STATE OF TEXAS.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL
APPEALS OF THE STATE OF TEXAS.

**MOTION FOR LEAVE TO FILE PETITION FOR RE-
HEARING AND PETITION FOR REHEARING.**

F. S. K. WHITTAKER,

J. P. ROGERS,

Counsel for Petitioner.

CARTER WESLEY,

Of Counsel.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 87

BOB WHITE,

Petitioner,

vs.

THE STATE OF TEXAS.

**MOTION FOR REHEARING OUT OF RULE ON APPLI-
CATION FOR WRIT OF CERTIORARI.**

*To the Honorable Supreme Court of the United States of
America:*

Bob White, petitioner in the above numbered and entitled cause, shows by this motion to have the Honorable Court reconsider the petition of the appellant for writ of certiorari under the rules of the said court therefor filed with his motion to proceed in forma pauperis upon leave granted by said court, and permit this appellant to have this Court reconsider its action in denying the application for a writ of certiorari out of the rule required for motions for rehearing for the following reasons:

As shown by the appellant's petition, this is criminal case in which the said appellant, Bob White, was indicted in

the District Court of Polk County, Texas, and by change of venue granted upon the application for Bob White the same was removed to the District Court of Montgomery County, Texas, where he was tried, convicted and assessed the extreme penalty of death, for the alleged offense of rape as set forth in said indictment.

The case was duly appealed to the Court of Criminal Appeals of Texas, and which judgment was affirmed by said court on February 15, 1939, and after overruling of motion for rehearing on May 17, 1939, the said judgment of conviction became final, there being no further court to apply in said State, as this court being the highest court in the State from which a decision can be had in criminal cases of felony grade. The appellant then sought under motion for leave to proceed in forma pauperis, a writ for certiorari, which was denied on November 15, 1939; by this Honorable Supreme Court.

Your appellant, unless this Honorable Court hear and grant this motion out of rule for rehearing, will be executed by electrocution by the Warden of the State Penitentiary under the judgment of conviction as affirmed by the Court of Criminal Appeals of Texas.

In addition to the errors assigned in the original petition, which will not be restated, there are other errors in the proceedings in the State courts which raise substantial issues showing violations under the 14th Amendment, Section One of the Constitution of the United States by the State of Texas, as will be hereinafter set out.

This Honorable Court has jurisdiction, because at the trial thereof, Bob White seasonable made objections and reserved exceptions to the trial court admitting in evidence and allowing to go to the jury, which convicted him and assessed the death penalty, an alleged confession made by the appellant, and presented by the State. The appellant offered evidence to show that the said alleged confession

was made and signed by him, under circumstances and conditions proscribed by the Federal Constitution, under the equal protection of the laws and due process provisions in the 14th Amendment; and which Federal question the trial court passed upon and denied, and its judgment was affirmed in this particular by the Court of Criminal Appeals of Texas, the highest court in Texas, from which a decision thereon could be had. Which action is here affirmed as error and contrary to applicable decisions of this Honorable Court, where the confessions are obtained by brutal and inhuman methods proscribed by the due process clause of the Federal Constitution in the 14th amendment. The appellant, being a Negro man, accused of raping a white woman in Texas, where, as reflected by the record, the populace could hardly be restrained from doing the prisoner violence, where, as the record here discloses, to be accused of such crime, is sufficient for summary action at the hand of mobs; where in this case it became necessary for the Governor of Texas to send Texas Rangers to protect the prisoner, your appellant, and at least give him a semblance of a trial; where the State officers impelled more by demand of the mob to get a victim upon which it can exhibit its spleen, as shown by the record in this case; where this illiterate country farmer, arrested with others, and kept confined in Polk County jail, without advice of counsel for several days, and during which time he was taken out at night with other Negroes by the State officers and hung by his hands, naked and beaten until he fainted; then threatened with death if he disclosed his treatment and this process completed by threats of death, and intimations that they (State officers) would turn them over to the enraged citizens unless they confessed. Your appellant, with his shirt beaten off, was rushed through the country to Beaumont, Texas, to escape the alleged fury of a mob, where confined in said place in the jail, surrounded by the county

peace officers and Texas Rangers, the county attorney and a "private prosecutor", without access to counsel, under threats of violence was forced to sign a previously prepared "confession", all of which the record will reflect. With this "confession" the great State of Texas, convicted its weakest citizen in the face and fury of a mob, in a so-called trial under the common law.

This appellant here states to deny his writ would seem to lend encouragement to such practices of "third degree" methods especially in cases of the nature of which the appellant is accused, and make justice a mockery and so called trials a farce. The appellant prays that this Honorable Court will not permit any technical rules to bar it from rendering substantial justice.

II.

The appellant will further show this Honorable Court, that he was not given a fair trial, because of the intimidation of the large number of white people created by their menacing and threatening attitudes. All Negroes in the town of Livingston were afraid to come to town, as the whites were threatening mob violence. Some seventy-five deputies, together with State Rangers were necessary to guard the witnesses, counsel and the appellant. Thus due process of law and equal protection of the laws enjoined on the State of Texas by the 14th Amendment to the Federal Constitution were denied, which this record should reflect. The error of the State court in this regard should be reversed.

III.

The appellant urges this Court to review the entire record and former petition of the appellant, so that the State will not take away this Negro's life without due process of law.

WHEREFORE the appellant prays that his application for a writ of certiorari be allowed, and that the transcript of

the records, statement of facts, and all pertinent proceedings and papers upon which said decree was rendered, opinion based, and motion for rehearing, be duly authenticated and by order of this Honorable Court be sent by the Criminal Court of Appeals as such case made and provided in order that the same may be inspected and corrected in accordance with law and justice.

F. S. K. WHITTAKER.

J. P. ROGERS.

CARTER WESLEY,
Of Counsel.

Assignment of Errors.

Now comes Bob White, appellant in the above numbered and entitled cause and files the following additional assignments of error upon which he relies as additional reasons for the granting of his motion to reconsider rehearing out of rule in his application for writ of certiorari to the Court of Criminal Appeals of Texas, under the final decree of said court rendered on motion for rehearing rendered May 17, 1939.

3

The Court of Criminal Appeals erred in affirming the judgment of the trial court in overruling the appellant's objections made to the admission in evidence of the involuntary "confession" of the accused, secured by threats, violence and torture in violation of the due process clause and equal protection clause of the 14th Amendment to Federal Constitution, which rights were properly and reserved, and erroneously decided by the trial court and the Court of Criminal Appeals.

4

The Court of Criminal Appeals erred in affirming the judgment of the trial court inflicting the death penalty on

the appellant, as the circumstances and conditions under which the trial was had, in the face of an intimidating mob, which was not conducive that impartially and calm deliberation essential to court of law, and violates due process of law under the 14th Amendment to the Federal Constitution.

WHEREFORE appellant prays for errors alleged and those presented under its petition for writ of certiorari to the Court of Criminal Appeals of the State of Texas, in all things be granted and on final hearing such final decree reverse the said State court and that its action affirming the trial court be reversed.

F. S. K. WHITTAKER,
J. P. ROGERS,
Attorneys for Appellant.

CARTER WESLEY,
Of Counsel.

